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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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May 26, 2010

BEFORE RELYING ON THE  
ANSWER TO QUESTION 2 IN  
THIS OPINION, SEE ACT 2015-  
526.

Honorable Irene B. Collins  
Commissioner  
Department of Senior Services  
Post Office Box 301851  
Montgomery, Alabama 36130-1851

Open Meetings Act – Senior Citizens Hall  
of Fame – Senior Services Department

The Alabama Senior Citizens Hall of Fame  
is a governmental body as defined by the  
Alabama Open Meetings Act and must  
comply with the requirements set out by  
the act.

Even if a quorum is physically present,  
additional members of the Board of the  
Senior Citizens Hall of Fame that are not  
physically present may not participate or  
vote in meetings through electronic means.  
A board member may, however, listen to a  
meeting through electronic means.

Dear Ms. Collins:

This opinion of the Attorney General is issued in response to your  
request.

QUESTION ONE

Is the Alabama Senior Citizens Hall of Fame  
governed by the provisions of the Alabama Open  
Meetings Act?

FACTS AND ANALYSIS

The Alabama Open Meetings Act ("OMA") is codified in section 36-25A-1, *et seq.*, of the Code of Alabama. The act prohibits governmental bodies from holding closed meetings except under limited circumstances. ALA. CODE § 36-25A-1 (Supp. 2009). The OMA specifically applies to "all meetings of a governmental body." *Id.*

The threshold question is whether the Senior Citizens Hall of Fame ("Hall of Fame") is a governmental body as defined by the act. The OMA defines "governmental body" as follows:

(4) GOVERNMENTAL BODY. *All boards, bodies, and commissions of the executive and legislative departments of the state or its political subdivisions or municipalities which expend or appropriate public funds; all multimember governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state or its political subdivisions or municipalities, including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state or its political subdivisions, counties or municipalities; and all quasi-judicial bodies of the executive and legislative departments of the state and all standing, special, or advisory committees or subcommittees of, or appointed by, the body.*

ALA. CODE § 36-25A-2(4) (Supp. 2009) (emphasis added).

The Alabama Senior Citizens Hall of Fame is composed of senior citizens of Alabama who have been recognized for service or accomplishments that have benefited the lives of older Americans. ALA. CODE § 38-3-21 (Supp. 2009). The Hall of Fame operates under the Department of Senior Services and receives clerical assistance, funding for meetings, and reimbursement for travel and other expenses from the Department of Senior Services. ALA. CODE § 38-3-23; ALA. CODE § 38-3-24; ALA. CODE § 38-3-25 (Supp. 2009). The Hall of Fame is a body of a state department and expends public funds in its operation; therefore, it is a governmental body as defined by the OMA.

### CONCLUSION

The Alabama Senior Citizens Hall of Fame is a governmental body as defined by the Alabama Open Meetings Act and must comply with the requirements set out by the act.

### QUESTION TWO

If the Board of the Senior Citizens Hall of Fame ("Board") is governed by the Alabama Open Meetings Act, and if a quorum is physically present, can additional members of the Board that are not physically present join the meeting by electronic means and vote?

### FACTS AND ANALYSIS

The Open Meetings Act and its predecessor, the Sunshine Law, were established to create transparency in government. It is through this legislation "that the whole deliberative process be open to public scrutiny, rather than there be the mere formal announcement of decisions already made in private." *Miglionico v. Birmingham News Co.*, 378 So. 2d 677, 680 (Ala. 1979). Alabama law has consistently been interpreted to require physical presence at meetings to constitute a quorum and comply with the Open Meetings Act. Opinion to Honorable Nancy Worley, Secretary of State, dated March 21, 2006, A.G. No. 2006-071; opinion to Honorable Kay Ivey, State Treasurer, dated February 13, 2004, A.G. No. 2004-072. Because telephonic presence is not the same as physical presence, a board member may not participate or vote unless physically present at a board meeting. A board member could, however, listen to the meeting through electronic means.

### CONCLUSION

To be considered as a part of the quorum for a meeting conducted pursuant to the OMA, board members must be physically present. Because the OMA does not authorize telephonic or video conferencing as a form of acceptable means of creating a quorum, only board members that are physically present are permitted to participate in the deliberative and voting processes. The Board of the Senior Citizens Hall of Fame is governed by the Alabama Open Meetings Act. Thus, even if a quorum is physically present, additional members of the Board that are not physically present may not participate or vote in

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meetings through electronic means. A board member may, however, listen to a meeting through electronic means.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

TK/MMG/lcr  
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